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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/027,602

12/20/2001

Larry G. Jones

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27777

7590

04/21/2003

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EXAMINER

STULTZ, JESSICA T

ART UNIT

PAPER NUMBER

2873

DATE MAILED: 04/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,602

Applicant(s)

JONES ET AL.

Examiner

Jessica T Stultz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 5-6, 9-10, and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Zhang.

Regarding claims 1-2, 5-6, 9-10, and 12-13, Zhang discloses an ophthalmic contact lens for a lens wearer (Column 2, lines 42-60, wherein the contact lens is "10", Figure 2), comprising a first refractive surface (Column 2, line 7, which discloses the spiral pattern achieving a refractive index change, i.e. the optical corrective surface as refractive) comprising an optic zone having an area of distance optical power and a second refractive surface, an area of near optical power on the front surface of the lens (Column 1, lines 14-29 and Column 2, lines 42-60, wherein the contact lens "10" is a multifocal lens which would contain distance and near optical powers, specifically the differing dioptric powers of the spiral pattern that correct for myopia and hyperopia located on the front "anterior surface" of the lens "12", Figure 2), with a spiral pattern on its front surface (Column 2, lines 2-60, wherein the spiral area is shown as band "20" on lens "10", Figure 2). Regarding the spiral pattern having near power interspersed in the distance power of the lens, the near power region will inherently be "interspersed" within the distance power in a continuous manner throughout the spiral as disclosed (Column 2, lines 2-60, wherein the spiral area is shown as band "20" on lens "10", Figure 2).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhang in view of Juhasz.

Regarding claims 1-2, 5-6, 9-10, and 12-13 Zhang discloses an ophthalmic contact lens for a lens wearer (Column 2, lines 42-60, wherein the contact lens is "10", Figure 2), comprising a first refractive surface comprising an optic zone having an area of distance optical power and second refractive surface having an area of plano power in a second optical zone, an area of near optical power on the front surface of the lens (Column 1, lines 14-29 and Column 2, lines 42-60, wherein the contact lens "10" is a multifocal lens which would contain distance, plano, and near optical powers, which contains both distance and near optical powers, specifically the differing dioptric powers of the spiral pattern that correct for myopia and hyperopia located on the front "anterior surface" of the lens "12", Figure 2), with a spiral pattern on its front surface (Column 2, lines 2-60, wherein the spiral area is shown as band "20" on lens "10", Figure 2), but does not specifically disclose that the spiral pattern is an area of near optical power. Juhasz teaches of a method for vision correction using near optical powers made by laser ablation on the surface of a person's eye in the shape of a spiral (Column 5, line 16-Column 6, line 13, wherein myopia is corrected by forming a spiral path on the eye using laser ablation, Figure 4) to correct for myopia, i.e. near-sighted vision (Column 5, lines 24-26). Therefore, it would have been obvious

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to one having ordinary skill in the art at the time the invention was made for the lens of Zhang to further include the spiral pattern comprising the near distance optical power since Juhasz teaches of a method for vision correction using near optical powers made by laser ablation on the surface of a person's eye in the shape of a spiral to correct for myopia, i.e. near-sighted vision.

Regarding claim 3, it would have been obvious that the ophthalmic lens of Zhang and Juhasz would further include a second refractive surface that provides cylinder power since it is well known in the art of contact lens to make soft contact lens in a toric shape of cylindrical power to correct for the wearer's astigmatism. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for the ophthalmic lens of Zhang and Juhasz to further include a second refractive surface that provides cylinder power since it is well known in the art of contact lens to make soft contact lens in a toric shape of cylindrical power to correct for the wearer's astigmatism.

Regarding claims 4 and 11, it would have been obvious that the ophthalmic lens of Zhang and Juhasz would further include a second refractive surface that is a topographically-derived surface since it is well known in the art of contact lenses for one surface to be topographically-derived so that it will remain firmly fit on the eye of the user. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for the ophthalmic lens of Zhang and Juhasz would further include a second refractive surface that includes a second refractive surface that is a topographically-derived surface since it is well known in the art of contact lenses for one surface to be topographically-derived so that it will remain firmly fit on the eye of the user.

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Regarding claims 7, 8, and 14, Zhang further discloses that the first refractive surface is the front surface of the lens (Column 1, lines 14-29 and Column 2, lines 42-60, wherein the contact lens "10" is a multifocal lens which contains both distance and near optical powers, specifically the differing dioptric powers of the spiral pattern that correct for myopia and hyperopia located on the front "anterior surface" of the lens "12", Figure 2) and it would be inherent that the second refractive surface is a back surface of the lens, this being reasonably based upon the second refractive surface being used to keep the lens firmly on the eye of the user.

Examiner's Comment

For applicant's information, the examiner suggests a few changes to the claims to make the claims patentable over the prior art. Specifically, in claim 1, examiner suggests adding ", in a first substantially spiral pattern," after "of distance optical power", changing " and in a substantially spiral pattern is an area of near optical power" to "and in a second substantially spiral pattern, that is discontinuous from the first substantially spiral pattern, is an area of near optical power"(wherein the underlined terms would be added to make the claim allowable). Similarly in claim 9, examiner suggests adding ", in a first substantially spiral pattern," after "of plano power in a second optical zone", changing " and in a substantially spiral pattern is an area of near optical power" to "and in a second substantially spiral pattern, that is discontinuous from the first substantially spiral pattern, is an area of near optical power"(wherein the underlined terms would be added to make the claim allowable).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Oyama et al, Lorenz et al, and Swinger et al are of some similar structure to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica T Stultz whose telephone number is (703) 305-6106. The examiner can normally be reached on M-Th 7:30-5, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 703-308-4883. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



Jessica Stultz
April 14, 2003



JORDAN SCHWARTZ
PRIMARY EXAMINER